Supreme Court, U.S.
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OFFICE OF THE CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

MONTGOMERY BLAIR SIBLEY,

Petitioner,

vs.

BARBARA SIBLEY,

Respondent.

On Petition for Writ of Certiorari to
the Florida Third District Court of Appeal

Petition for Writ of Certiorari

Montgomery Blair Sibley
560 Longhorn Crescent
Rockville, Maryland 20850

Counsel for Petitioner

QUESTION PRESENTED FOR REVIEW

The Florida Third District Court of Appeal has determined that Petitioner's four motions to disqualify the trial judge are "moot". This holdings raises a substantial federal question that warrant immediate review by this Court:

Whether the Florida Third District Court of Appeal's determination of "mootness" violated Petitioner's Equal Protection Guarantees found in the Fourteenth Amendment by treating Petitioner's four motions to disqualify differently than similarly situated litigants whose motions to disqualify were expeditiously determined and to whom retro-active relief was made available?

PARTIES TO THE PROCEEDINGS

The following individuals and entities are parties to the proceeding in the court below:

Montgomery Blair Sibley, Petitioner/Appellant.

Barbara Sibley, Respondent/Appellee.

CORPORATE DISCLOSURE STATEMENT

No parties are corporations. Sup. Ct. R. 29.6.

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PETITION FOR A WRIT OF CERTIORARI TO THE FLORIDA THIRD DISTRICT COURT OF APPEAL

Petitioner Montgomery Blair Sibley, ("Father") through undersigned counsel, prays that a writ of certiorari issue to review the judgment and opinion of the Florida Third District Court of Appeal entered on August 6, 2003 – which the Florida Supreme Court by a vote of 5-2 declined to review on September 3, 2004 – because the Florida Third District Court of Appeal has far departed from the requisite course of equal protection, thus denying Father's rights, privileges and/or immunities under the United States Constitution and in a manner which conflicts with relevant decisions of this Court.

OPINIONS BELOW

The August 6, 2003, opinion of the Florida Third District Court of Appeals is reprinted in the appendix hereto, *Appendix-2, infra.* The September 3, 2004, order of the Florida Supreme Court is reprinted in the appendix hereto, *Appendix-4, infra.*

JURISDICTION

The judgment of the Florida Supreme Court was entered on September 3, 2004. The jurisdiction of this Court is invoked under 28 U.S.C. §1257.

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

U.S. Constitution, Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The original action below was upon a petition for dissolution of marriage upon which a final judgment of dissolution was granted on September 20, 1994. That matter was assigned Case Number: 94-18177 in the Florida 11th Judicial Circuit, in and for Miami-Dade County, Family Court Division 19.

Subsequent to the dissolution, litigation commenced in Case Number: 94-18177 regarding child custody and support. On August 20, 2002, Father filed his Seventh Motion to Disqualify the trial judge, Maxine Cohen Lando, from presiding over the determination of the pending issues in Case Number: 94-18177. Judge Lando never ruled on Father's Seventh Motion to Disqualify.

Notwithstanding the unresolved Seventh Motion to Disqualify her, on November 22, 2002, Judge Lando entered an order of contempt incarcerating Father in Case Number: 94-18177.

On January 31, 2003, Judge Lando was transferred from the Family Court Division to the General Jurisdiction Division by administrative order. Nonetheless, she continued to handle Case Number: 94-18177 notwithstanding that on January 31, 2003, that case had been administratively transferred to Judge Wilson who assumed the cases in Family Court Division 19.

Astonishingly, in Case Number: 94-18177 regardless of her transfer and pending motions to disqualify her:

On February 14, 2002, Judge Lando entered an

order on disposition of personal property;

On March 6, 2003, Judge Lando entered an order on attorney fees;

On April 7, 2003, Judge Lando entered an order on contempt re-incarcerating Father; and

On April 21, 2003, Judge Lando entered an order – without notice to or the presence of Father but with the presence of opposing counsel – denying Father's motion to return passport to him.

On April 15, 2003 – six days before the April 21 hearing and order – Father filed and served upon Judge Lando his Eighth Motion to Disqualify her in Case Number: 94-18177. Judge Lando never ruled upon Father's Eighth Motion to Disqualify but nonetheless conducted the hearing on April 21, 2003. An audio transcript of that hearing is available for review at "www.mysideofthestory.info".

On May 7, 2003, Father filed and served upon Judge Lando his Ninth Motion to Disqualify her in Case Number: 94-18177. Once again, Judge Lando never ruled upon Father's Ninth Motion to Disqualify.

On May 28, 2003, Father filed his Petition for Prohibition and Mandamus with the Third District Court of Appeal seeking an order prohibiting Judge Lando from further presiding in Case Number: 94-18177 and/or requiring her to rule upon the pending motions to disqualify her. That petition was assigned Case Number: 3D03-1392 and it is from this case which the instant petition to this Court arises.

On June 12, 2003, Father filed his Tenth Motion to Disqualify Judge Lando from Case Number: 94-18177 which, along with the three prior pending and unresolved motions to

disqualify, Judge Lando never ruled upon.

Notwithstanding the four pending motions to disqualify on July 17, 2003, Judge Lando entered an order granting an *ore tenus* motion for contempt for failure to pay educational expenses. On July 20, 2003, Father amended his petition for writ of prohibition in Case Number: 3D03-1392 by giving notice to the Third District Court of Appeal that Judge Lando was – as the July 17, 2003, order demonstrated – continuing to hold hearings and enter orders notwithstanding the four pending motions to disqualify.

On August 6, 2003, the Third District Court of Appeal entered its order in Case Number: 3D03-1392 stating as to the petition for writ of prohibition that it "is denied as moot". The petition for mandamus was simply denied. *Appendix-2, infra.*

On September 26, 2003, after a motion for rehearing, clarification and request for written decision by Father – under the apparently toothless Florida Rules of Appellate Procedure, Rule 9.330 which expressly raised the conflicts identified here – the Third District Court of Appeal denied that motion per curiam without explanation.

On September 3, 2004, in a 5-2 decision, the Florida Supreme Court entered its order denying discretionary review of the August 6, 2003, order of the Florida Third District Court of Appeal. *Appendix-4, infra.*

REASONS FOR GRANTING THE WRIT

The reason for granting this writ is that the Florida Third District Court of Appeal has denied to Father the constitutional right of Equal Protection of the Laws by treating Father differently than identically situated litigants in motion to disqualify cases. Moreover, this treatment was done without explanation of the disparate treatment in grotesque violation of the Florida Third District Court of Appeal own enunciated statement of its obligations under the Equal Protection Clause.

Moreover, to deny this writ would be to deny to Father a forum to raise this Equal Protection challenge to the actions of the Florida Third District Court of Appeal as this Court's *Rooker-Feldman* doctrine prohibits Father from raising this challenge in United States District Court. Hence, for this Court to deny this writ is to deny Father access to court for redress of his grievances – a result which this Court has repeatedly recognized both as an "unalienable" and "fundamental" right and under various clauses of the United States Constitution is undeniable to Father. Indeed, it would be – in the eyes of at least one Supreme Court Chief Justice – "treason" to deny such review.

I. Father is Entitled To Equal Protection of the Laws

In assessing Father's right to equal protection of the laws, it is appropriate to start with the Florida Third District Court of Appeal's own statement in this regard: in *Velez v. The City of Coral Gables*, 819 So.2d 895, 898 (Fla.App. 3 Dist. 2002), under an Equal Protection rationale, that court stated: "The interpretation urged by the City and the Mallos also raises the spectre of denial of equal protection of the law, as suggested by the Velezes. **An administrative agency has the burden of providing a reasonable explanation for inconsistent results based upon similar facts.**" (Emphasis added.) Here, no less than an administrative agency, the Florida Third District Court of Appeal has "has the burden of providing a reasonable

explanation for inconsistent results based upon similar facts." As demonstrated below, the Third District Court of Appeal failed to provide the requisite explanation for the "mootness" result of Father's four motions to disqualify while other litigants enjoyed reversals, disqualifications and re-considerations of the removed-judge's prior orders.

More to the point, this Court has repeatedly recognized that notions of Equal Protection demand that similarly situated litigants are treated similarly: *James B. Beam Distilling Co. v. Georgia*, 501 U.S. 529, 544 (1991)("But selective prospectivity also breaches the principle that litigants in similar situations should be treated the same, a fundamental component of stare decisis and the rule of law generally."); *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985) (explaining that the Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike."); *Village of Willowbrook v. Olech* 528 U.S. 562 (1999)("Our cases have recognized successful equal protection claims brought by a "class of one, 'where the plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment. See *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923); *Allegheny Pittsburgh Coal Co. v. Commission of Webster Cty.*, 488 U.S. 336 (1989). In so doing, we have explained that '[t]he purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.").

Perhaps this right to Equal Protection was most succinctly stated by this Court in *Gulf, C. & S. F. Ry. Co. v. Ellis,* 165 U.S. 150, 159-160 (1897)

> But arbitrary selection can never be justified by calling it classification. The equal protection

> demanded by the fourteenth amendment forbids this. No language is more worthy of frequent and thoughtful consideration than these words of Mr. Justice Matthews, speaking for this court, in *Yick Wo v. Hopkins,* 118 U. S. 356, 369: "When we consider the nature and the theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power." The first official action of this nation declared the foundation of government in these words: 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.' While such declaration of principles may not have the force of organic law, or be made the basis of judicial decision as to the limits of right and duty, and while in all cases reference must be had to the organic law of the nation for such limits, yet the latter is but the body and the letter of which the former is the thought and the spirit, and it is always safe to read the letter of the constitution in the spirit of the Declaration of Independence. No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government.

Here, Father has been denied those "equality of rights which is the foundation of free government" by the Florida Third District Court of Appeal treating Father's motions to disqualify differently than it treated similarly situated litigants as

demonstrated below. Such a result – particularly coming as it did without explanation as to why Father's matters are "moot" from the Florida Third District Court of Appeal – is nothing more than the "purely personal and arbitrary power" that court wields in its otherwise *de facto* un-reviewable power.

II. The Florida Third District Court of Appeal Denied Equal Protection of the Laws to Father

Contrary to the holding of the Florida Third District Court of Appeal, this matter was not "moot" when it entered its order on August 6, 2003. When the petition for prohibition and/or mandamus was filed on May 28, 2003, with the Florida Third District Court of Appeal, Judge Lando was planning to and did in fact hear a motion in this matter on June 17, 2003. Hence, there was no reason to think she would not continue to act in this matter notwithstanding the four unresolved pending motions to disqualify her and her transfer from the family court division.

Father's case presents a situation identical to *Barber v. Mackenzie*, 562 So.2d 755, 756 (Fla.App. 3 Dist. 1990). In *Barber*:

> Subsequent to the filing of the petition for prohibition and response thereto, this court was informed that the trial judge has transferred to another division of the circuit court, and no longer has responsibility for the matrimonial action pending below. The respondent trial judge and the respondent wife in the matrimonial action contend that the petition is now moot, and their point is well taken insofar as the petition sought to substitute a new trial judge in place of the respondent judge.

However, the Florida Third District Court of Appeal went

on to hold: "We conclude, therefore, that the premise of petitioner's argument is correct: had the motion for disqualification been granted, he could have moved for reconsideration of the trial court's orders. The matter is not entirely moot.. . . We grant certiorari and quash the orders denying the motions for disqualification. Petitioner may move for reconsideration in the trial court." *Id.* at 757.

A. Father is Entitled to a Hearing Pursuant to Florida Rules of Judicial Administration, Rule 2.160(h)

The reason the matter was not "moot" in *Barber,* was that a litigant enjoys a right to reconsideration of the trial court's orders after the trial court's disqualification.

Here, on August 20, 2002, Father filed his Seventh Motion to Disqualify which to date has not been ruled upon. As such, as an initial matter, Father – just as the petitioner in *Barber* – is entitled to a full evidentiary hearing on a motion for reconsideration of Judge Lando's orders.

This right arises under Florida Rules of Judicial Administration, Rule 2.160(h) which states: "Prior Rulings. Prior factual or legal rulings by a disqualified judge may be reconsidered and vacated or amended by a successor judge based upon a motion for reconsideration, which must be filed within 20 days of the order of disqualification, unless good cause is shown for a delay in moving for reconsideration or other grounds for reconsideration exist."

Hence, Father cannot be denied his right to a hearing to reconsider and vacate Judge Lando's prior orders – a right expressly recognized by the Florida Third District Court of Appeal and accorded to the litigant in *Barber* by the sleigh-of-hand of transferring the case rather than ruling upon

the four pending motions to disqualify and then calling Father's four motions to disqualify "moot".

B. Judge Lando's Post-August 20, 2002 Orders Are Void And Must Be Vacated

Secondarily, all orders entered by Judge Lando post-August 20, 2002, are void as a matter of law and the failure of the Florida Third District Court of Appeal to recognize this violates Father's Equal Protection guarantees as that Court has expressly recognized other similarly situated litigants' rights in this regard.

Florida Statute, §38.10, "Disqualification of judge for prejudice; application; affidavits; etc.", states:

> Whenever a **party to any action or proceeding makes and files an affidavit** stating fear that he or she will not receive a fair trial in the court where the suit is pending on account of the prejudice of the judge of that court against the applicant or in favor of the adverse party, **the judge shall proceed no further**, but another judge shall be designated in the manner prescribed by the laws of this state for the substitution of judges for the trial of causes in which the presiding judge is disqualified. (Emphasis added).

Hence, on August 20, 2002, when Father's affidavit and motion filed in conformity with §38.10 were filed with her, Judge Lando was barred by §38.10 from further proceeding in the case until she complied with the procedural requirements of Florida Rules of Judicial Administration, Rule 2.160. As to date she has not complied with that Rule, all her orders post-August 20, 2002, are void as a matter of law and should have been vacated by the

Florida Third District Court of Appeal.

In *Stimpson Computing Scale Co., Inc. v. Knuck*, 508 So.2d 482 (Fla.App. 3 Dist. 1987), the Florida Third District Court of Appeal reversed the award of attorneys' fees and costs entered after a motion for disqualification had been made but before ruling on that motion recognizing this principle and stating:

> A judge faced with a motion for recusal should first resolve that motion before making additional rulings in a case. While we are not unaware of the importance of witness courtesy, a recusal motion must be heard first. The rationale for such a progression is based upon the principle that once a trial judge recuses himself orders issued thereafter are void subject to narrow exceptions. . . .The order of the entire hearing was askew once the court elected to consider the amount of attorneys' fees without first resolving the motion for disqualification.

Id. at 484. As a result, the Florida Third District Court of Appeal entered it's order in *Stimpson*, "Writ of prohibition issued; orders under review reversed and cause remanded for a new trial on all issues." *Id.* at 485. Father deserved the same result if equal protection is to be more than a right without a remedy.

Indeed, *Stimpson* is not the only time the Florida Third District Court of Appeal has afforded this right to litigants: *Breakstone v. MacKenzie*, 561 So.2d 1164 (Fla.App. 3 Dist. 1989)("It is well settled that '[a] judge faced with a motion for recusal should first resolve that motion before making additional rulings in a case.... [A] recusal motion must be heard first.' *Stimpson Computing Scale Co. v. Knuck*, 508 So.2d at 484. Not only is the procedure well established, but the approach taken here creates, rather than dissipates, a perception that the trial

judge attempted to retain the case as an accommodation to withdrawing counsel"); *Shah v. Harding*, 839 So.2d 765, 766 (Fla.App. 3 Dist. 2003)("When a recusal motion is presented to a trial court, the trial judge is required to immediately rule on the motion pursuant to Section 38.10, Florida Statutes (2002), and the Florida Rules of Judicial Administration, Rule 2.160. . . Here, the trial judge's failure to rule on Shah's recusal motion until after deciding the merits of the case constituted error. See *MacKenzie v. Super Kids Bargain Store, Inc.*, 565 So.2d 1332 (Fla. 1990); Fla. R. Jud. Admin. 2.160(f)").

Similarly, the rest of the courts of the State of Florida recognize the void nature of post-motion-to-disqualify actions of a trial court. The Florida Supreme Court has stated in *Escalona v. Wisotsky*, 781 So.2d 1063 (Fla. 2000) , "This Court holds that a motion to disqualify constitutes record activity regarding a claim of failure to prosecute, and that the trial court's failure to act immediately on the motion to disqualify violated section 38.10 and rule 2.160, as did the trial court's ruling on the motion to dismiss while the motion to disqualify was pending. Thus, the decision below is quashed, the case is remanded, and we approve Lukowsky."

Likewise, various other District Court of Appeals in Florida have recognized the void nature of judicial actions post filing of an unresolved motion to disqualify: *Wishoff v. Polen in and for Broward County*, 468 So.2d 1035 (Fla.App. 4 Dist. 1985)("Since the final judgment was entered after petitioner filed her motion for disqualification, it must be vacated."); *Gilmer v. Shell Oil Co.*, 324 So.2d 171,, (Fla.App. 2 Dist. 1975)("The record on appeal shows only that the order of recusal was entered on March 7, 1975 and the final judgment was entered subsequent thereto on March 12, 1975. Under these circumstances and under the law as established by *Kells* and *Vaughn*, supra, **we hold that the final judgment was void and of no effect.** The final judgment is vacated and set aside and the cause remanded with directions that it be taken up before a

circuit judge not disqualified to act in the further proceedings."); *Doe Ex Rel. Doe v. Publix Super Markets* 814 So.2d 1249 (Fla.App. 2 Dist. 2002)("**The general rule is that once a party has filed a motion to recuse, the trial judge may not proceed any further in the action**, § 38.10, Fla. Stat. (2000)").

Plainly, §38.10 and the above-cited cases stand for the proposition that once a motion to disqualify is filed, the court loses jurisdiction to proceed until that motion is resolved. This substantive right of Father's cannot be denied by the Florida Third District Court of Appeal by its approval of Judge Lando's refusal to rule upon the four motions to disqualify her and then – after Father's case had been transferred to a new judge to avoid her adjudication of the motion to disqualify – waiting one year and then calling the motions to disqualify Judge Lando "moot" thereby denying to Father his rights under Florida Rules of Judicial Administration, Rule 2.160(h) to have Judge Lando's orders reconsidered by the successor judge.

As such, the following orders entered by Judge Lando post-August 20, 2002, are void as a matter of law and the failure of the Florida Third District Court of Appeal to vacate them pursuant to the mandate of *Fuster-Escalona v. Wisotsky*, 781 So. 2d 1063, 1065 (Fla. 2000) ("When a trial court fails to act in accord with the statute and procedural rule on a motion to disqualify, an appellate court will vacate a trial court judgment that flows from that error.") was a denial of Equal Protection of the laws to Father:

i. The orders disbursing trust proceeds of August 27, 2002;
ii. The order awarding attorney fees of October 9, 2002;
iii. The orders of incarceration of October 18, 2002;
iv. The order on staying appeal of October 21, 2002;

v. The order of contempt of November 22, 2002;
vi. The order denying emergency motion and granting motion for contempt of December 19, 2002;
vii. The order on disposition of personal property of February 14, 2002;
viii. The order on attorney fees of March 6, 2003; and
ix. The orders on contempt of April 7, 2003, re-incarcerating Father.

III. Father Has No Other Forum To Contest The Florida Third District Court of Appeal's Violation of Equal Protection Guarantees

Plainly, this Court has reserved unto itself jurisdiction of Father's claims arising under the U.S. Constitution that the Florida Third District Court of Appeal is violating Father's equal protection guarantees in his child custody and support cases. [1] That reservation arises under the *Rooker-Feldman* doctrine where this Court held, "The District of Columbia Circuit properly acknowledged that the United States District Court is without authority to review final determinations of the District of Columbia Court of Appeals in judicial proceedings. Review of such determinations can be obtained only in this Court. See 28 U.S.C. § 1257."

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[1] This Court has declined to accept for review Petitioner's petitions for certiorari in Cases Number No. 03-1205, 03-1544, 03-682 and 03-1430 arising from attempts to litigate these issues in the United States District Court for the Southern District of Florida.

Additionally, by statute as noted in *Feldman*, District Courts are barred from reviewing matters that Congress has expressly and exclusively limited to review by this Court under 28 U.S.C. §1257. That statute reads:

> (a) **Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari** where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or **where any title, right, privilege, or immunity is specially set up or claimed under the Constitution** or the treaties or statutes of, or any commission held or authority exercised under, **the United States.** (Emphasis added).

Hence, Father can only raise the violation of Equal Protection to this Court.

For this Court to deny certiorari to Father would thus deny to Father access to court for redress of his grievances, a right (i) reserved by the citizens under the Ninth Amendment, (ii) repeatedly recognized by this Court as "inalienable" and "fundamental" under the reissued Magna Carta of 1225, Chapter 29 and (iii) guaranteed by the U.S. Constitution under:

(i) The Article IV Privileges and Immunities Clause - *Chambers v. Baltimore & Ohio R. Co.*, 207 U.S. 142, 148 (1907); *Blake v. McClung*, 172 U.S. 239, 249 (1898); *Slaughter-House Cases*, 16 Wall. 36, 79 (1873);

(ii) The First Amendment Petition Clause - *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731, 741 (1983);

California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 513 (1972);

(iii) The Fifth Amendment Due Process Clause - *Murray v. Giarratano*, 492 U.S. 1, 11, n. 6 (1989) (plurality opinion); *Walters v. National Assn. of Radiation Survivors*, 473 U.S. 305, 335 (1985);

(iv) The Fourteenth Amendment Equal Protection Clause - *Pennsylvania v. Finley*, 481 U.S. 551, 557 (1987), and

(v) The Fourteenth Amendment Due Process Clause - *Wolff v. McDonnell*, 418 U.S. 539, 576 (1974); *Boddie v. Connecticut*, 401 U.S. 371, 380-381 (1971).

Thus if Equal Protection is to be more than a right without a remedy, this Court must accept certiorari of this matter and interrogate the record upon Father's showing of a *prima facie* violation of Equal Protection guarantees by the Florida Third District Court of Appeal.

Finally, As Chief Justice Marshall in *Cohens v. Virginia*, 19 U.S. 264, 6 Wheat. 264, 404 (1821) stated:

> It is most true that [the United States Supreme Court] will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the

> Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgement, and conscientiously perform our duty. (Emphasis added).

The jurisdiction of this Court to hear this matter is granted not by the permissive language of 28 U.S.C. §1257, but by the mandatory language of Article III, §1, "The judicial power of the United States, shall be vested in one Supreme Court" and §2 "The judicial power shall extend to all cases, in law and equity, arising under this Constitution. . .". (Emphasis added.)

Thus, to deny certiorari of this matter which this Court is given express jurisdiction to decide by Article III of the Constitution would be – under Chief Justice Marshall's view – "treason".

CONCLUSION

Accordingly, this petition for a writ of certiorari must be granted to review and then remedy the afore-described denial of equal protection by the Florida Third District Court of Appeal.

Respectfully submitted,

Montgomery Blair Sibley
Counsel for Petitioner

Contents of Appendix

Opinions Below

The August 6, 2003, opinion of the Florida Third District Court of Appeals *Appendix-2*

The September 3, 2004, opinion of the Florida Supreme Court *Appendix-4*

IN THE DISTRICT COURT OF APPEAL OP FLORIDA
THIRD DISTRICT

JULY TERM, A.D. 2003
AUGUST 6, 2003
CASE NO.: 3D03-1392
LOWER TRIBUNAL NO. 94-18177

MONTGOMERY BLAIR SIBLEY,

Appellant(s)/Petitioner(s)

v.

BARBARA SIBLEY,

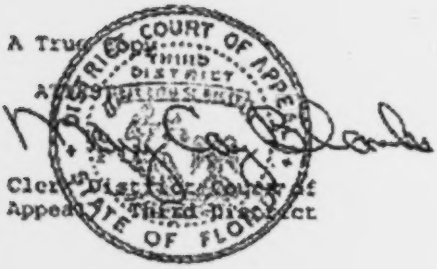
Appellee(s)/Respondents(s)

Upon consideration, respondent's motion to accept late served response is granted, and the response filed June 27, 2003 is accepted by the Court.

Following review of the petition for writ of prohibition, and the response and reply thereto, it is ordered that the petition for writ of prohibition is denied as moot. Following review of the petitions for writ of mandamus and certiorari and the response and reply thereto, it is ordered that said petitions are hereby denied.

Upon consideration of the motion for attorney's fees filed by respondent, it is ordered that said motion is granted and remanded to the trial court to fix amount.

GODERICH, FLETCHER and RAMIREZ, JJ., concur.



cc:
Montgomery Blair Sibley Dirk Lorenzen
Bette Ellen Quiat Jay M. Levy
Hon. Maxine Cohen Lando Harvey Ruvin

Supreme Court of Florida

FRIDAY, SEPTEMBER 3, 2004
CASE NO.: SC03-1953

Lower Tribunal No.: 3D03-1392

MONTGOMERY BLAIR SIBLEY vs. BARBARA SIBLEY
Petitioner(s) Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

Respondent's motion for attorney's fees is provisionally granted in the amount of $2,500.00, conditioned on the trial court's finding a fee award appropriate in light of the parties' respective financial need and ability to pay.

PARIENTE, C.J., and WELLS, ANSTEAD, LEWIS and BELL, JJ., concur.

A True Copy Test:

Thomas D. Hall

Thomas D. Hall

SUPREME COURT OF THE STATE OF FLORIDA